



Texas Department of Health

William R. Archer III, M.D.
Commissioner of Health

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February 9, 1998

The Honorable Dan Morales
Attorney General of Texas
P. O. Box 12548
Austin, Texas 78711-2548

RQ-1087

FILE # ML-4008-98

RECEIVED

FEB 11 1998

Dear General Morales:

I.D. # 40068

Opinion Committee

I am writing to request an Attorney General's Opinion under the authority of the Texas Gov't. Code Ann. §402.042(b)(2) (Vernon 1990).

An issue has arisen whether the Texas Department of Health (TDH) has the authority to require certain employees to obtain a contact lens dispensing permit in order to dispense contact lenses in Texas.

The Texas Contact Lens Prescription Act (Tex. Rev. Civ. Stat. art. 4552-A, §4(c) (Vernon Supp. 1998) (hereafter, the "Act") provides that contact lenses may only be dispensed by "(1) a physician, optometrist, or therapeutic optometrist; (2) a pharmacist; or (3) an optician who holds a valid contact lens dispensing permit issued [by TDH] under this Act." Section 8 of the Act exempts employees acting under the direct supervision and control of physicians, optometrists, therapeutic optometrists, or pharmacists from the permitting requirement. The word "employee" is not defined in the Act. Section 2(5) of the Act defines optician as "a person, other than a physician, optometrist, therapeutic optometrist, or pharmacist who is in the business of dispensing contact lenses." The word "business" is not defined.

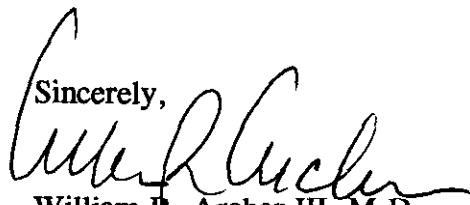
TDH received the attached inquiry from Jan Wier, Director of Professional Liability for the University of Texas Southwestern Medical Center at Dallas (Southwestern). Ms. Wier notes that individuals dispense contact lenses at Southwestern's clinic under the direct supervision and control of physicians and optometrists (who we understand to also be employed by Southwestern). These individuals are actually employees of Southwestern, and are not employees of the physicians or optometrists. In addition, Southwestern is a state agency, not acting for profit, and arguably not in the "business" of dispensing contact lenses.

QUESTIONS:

1. Are the Southwestern employees who dispense contact lenses under the direct supervision and control of Southwestern physicians and optometrists exempt from permitting requirements, though not strictly employees of those physicians or optometrists?
2. Or, are Southwestern and its employees exempt from permitting requirements because they are not in the business of dispensing contact lenses?

Your consideration of this request will be greatly appreciated. If you need additional information or have questions, please contact Susan Steeg, General Counsel at (512) 458-7236.

Sincerely,

A handwritten signature in cursive script, appearing to read "William R. Archer III".

William R. Archer III, M.D.
Commissioner of Health

THE UNIVERSITY OF TEXAS
SOUTHWESTERN MEDICAL CENTER
AT DALLAS

CONFIRMATION
FAXED
11-20-97

Janis C. Wier, J.D.
Director of Professional Liability

Writer's Direct Line: (214)648-4709
Fax: (214)648-9573

November 20, 1997

Mr. Steven Mills
Contact Lens Dispensing Permit Program
Texas Department of Health
P.O. Box 12197
Austin, Texas 78711-2197
by FAX (512) 834-6677

RE: Application for Contact Lens Dispensing Permit

Dear Mr. Mills:

Pursuant to our conversation this morning, I am forwarding a letter requesting guidance on whether opticians employed by UT Southwestern Medical Center must apply for a contact lens dispensing permit. As indicated, UT Southwestern is a state agency which employs ophthalmologists, optometrists and opticians. Its opticians have received a packet from the Texas Department of Health regarding permit applications.

I have confirmed that these opticians do not work in an independent office on campus, but are under the constant supervision of our ophthalmologists and optometrists, and that dispensing is done in a part of the clinic assigned to the Department of Ophthalmology. From my review of the statute, it does not appear that these are the individuals intended to be registered. I would request a response on whether a permit is required of these employees.

I appreciate your response to this query. Should you require additional information regarding this matter, please do not hesitate to contact me.

Sincerely yours,


Jan Wier

c: James P. McCulley, M.D.